REMARKS

Claims 1-37 were presented for examination and were pending in this application. In an Office Action dated July 30, 2004, claims 3, 8, 13, 16, 21, 26, 31 and 34 claims were objected to, and claims 1-7, 9-12, 14-15, 17-25, 27-30, 32-33, and 35-37 were rejected. Applicant thanks Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicant herein amends claims 1, 19, 31, 36, and 37. Claims 2 and 20 are cancelled and new claims 38 through 39 are added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application in a manner consistent with the Patent Office Business Goals, 65 Fed. Reg. 54603 (Sept. 8, 2000). In making these amendments, Applicant has not and does not narrow the scope of the protection to which Applicant considers the claimed invention to be entitled and does not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter now presented.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that Examiner reconsider all outstanding objections and rejections, and withdraw them.

Response to Specification

In the 1st paragraph of the Office action, Examiner objected to Applicant's specification. Applicant has amended the specification to correct ministerial errors, including the errors pointed out by Examiner on page 10, line 8 and page 22, line 16. Applicant notes no new matter is submitted with these amendments. Hence, Applicant believes the objection to be obviated and requests removal of it.

Response to Claim Objections

In the 2nd paragraph of the Office action, Examiner objects to claims 3, 21, and 31 for lack of antecedent basis. Applicant has amended claims 1 and 19, upon which claims 3 and 21 depend, to now include an initial recitation of "first and second trace file." With this amendment, claims 3 and 21 now have ample antecedent basis for this claim limitation. Thus, the basis for the objection for these claims is now obviated removal is requested.

Claim 31 has not been amended to depend from claim 29 rather than claim 28 so that there is now proper antecedent basis for "second network traversal time." Thus, the basis for the objection for this claim is now obviated and Applicant requests removal of the objection.

Response to Rejection Under 35 USC 103(a) in View of Dietz and Ogus

In the 4th paragraph of the Office action, Examiner rejects claims 1, 4-7, 9-12, 14-15, 17, 19, 22-25, 27-30, 32, 33, and 37 under 35 USC § 103(a) as allegedly being unpatentable in view of U.S. Patent No. 6,651,099 to Dietz et al. ("Dietz") and U.S. Patent No. 6,587,875 to Ogus ("Ogus"). In addition, in the 5th paragraph of the Office Action, Examiner rejects claims 2-3, 18, 20-21, and 35-36 under 35 USC § 103(a) as allegedly being unpatentable in view of Dietz, Ogus and U.S. Patent Application No. 2001/0039579 to Trcka et al. ("Trcka"). These rejections are respectfully traversed.

Applicant has amended representative claim 1 to now recite:

> A method of calculating network latency, the method including:
> correlating a first packet identifier recorded at a first network location with a second packet identifier recorded at a second network location, wherein the first and second packet identifiers indicate a common first packet and have respective first and second timestamps associated therewith; and
> calculating a first network traversal time for the first packet as the difference between the first and second timestamps associated with the first and second packet identifiers respectively,

wherein the first packet identifier and the first timestamp are contained in a first trace file captured at the first network location, and the second packet identifier and the second timestamp are contained in a second trace file captured at the second network location.

The claimed invention beneficially includes a first packet identifier and a first timestamp that are contained in a first trace file captured at the first network location, and a second packet identifier and a second timestamp are contained in a second trace file captured at the second network location, which in turn are used to calculate network latency specifics, such as cause and location of a delay.

The cited references do not disclose, suggest, or teach the claimed invention. Dietz discloses a "monitor for and a method for examining packets passing through a network connection point on a computer network." (Dietz, Abstract). Ogus discloses a "network protocol and associated methods for optimizing use of available bandwidth across a network under varying traffic conditions." (Ogus, Abstract). Notwithstanding whether it is even appropriate to combine Dietz and Ogus, Examiner does correctly note that both Dietz and Ogus fail to disclose or teach, *inter alia,* use of trace files at the first and second network nodes, as now claimed in claim 1. To cure this deficiency Examiner cites to Trcka. However, Trcka also fails to disclose this limitation as recited in claim 1.

Trcka discloses a "network security and surveillance system [that] passively monitors and records the traffic present on a local area network, wide area network, or other type of computer network, without interrupting or otherwise interfering with the flow of the traffic." (Trcka, Abstract). Trcka also discloses conventional means of "captur[ing] all valid data-link-level packets, and rout[ing] this traffic (together with date/time stamps) to a high-capacity, non-volatile data recorder to generate a low-level archival recording." (Id., ¶ 0010).

The system described in Trcka appears to disclose no more than time stamping packets, routing them in a network, and storing them, which is how conventional packet networks

function. Moreover, references to Figure 1 do not illustrate or describe a trace file as Applicant claims. For example, the disclosure in Trcka fails to disclose a "trace file" as Applicant recites. The "packet" in Trcka is no more than a conventional packet "intended to encompass cells, frames and other message formats used to transfer data across a network." (See Trcka, ¶¶ 0037-0047). There appears to be no disclosure in Trcka of having "the first packet identifier and the first timestamp are contained in a first trace file captured at the first network location, and the second packet identifier and the second timestamp are contained in a second trace file captured at the second network location," because Trcka does not disclose, suggest, or teach a concept of a trace file in a manner that is recited by representative claim 1. Thus, Trcka fails to cure the deficiencies of Dietz and Ogus, and therefore, the combination of Trcka, Dietz and Ogus fails to disclose the claimed invention in claim 1 as well as claims 3 through 19, and 21 through 37.

In addition, with respect to Applicant's claimed dependencies, Trcka also fails to disclose "a first traversal time" (and fails to disclose "a second traversal time" as recited in Applicant's dependent claims). Rather, there is no reference to, or even a functional description of, "a first traversal time" in Figure 10. (See Trcka, ¶¶ 0134-0135). Further, the reference to time in Figure 12 appears to be no more than start and end time information for surveillance data processing. (See Trcka, ¶¶ 0138). There appears to be no disclosure in Trcka of having "a first traversal time" or a "second traversal time" as Applicant claims, e.g., in claims 5-8 and 11-18 or 23-26 and 29-36.

Thus, for at least the reasons set forth above, Applicant submits that examined claims 1, 3 through 19, and 21 through 37 are patentably distinguishable over the cited references. Applicant respectfully requests reconsideration of the basis of the rejection to these claims and allowance of these claims at this time.

Conclusion

Applicant has added new claims 38 through 59 for consideration and examination. Applicant respectfully submits that these are supported by the specification and are commensurate within the scope of protection to which Applicant believes they are entitled. In particular, Applicant notes that these claims include previously objected to claims that were found to be allowable if rewritten in independent form. For example, claim 38 reflects objected to claim 8, claim 39 reflects objected to claim 13, claim 40 reflects objected to claim 16, and claim 45 reflects objected to claim 26.

In sum, Applicant respectfully submits that claims 1, 3 through 19, and 21 through 59, as presented herein, are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, Applicant requests reconsideration of the basis for the rejections or objections to these claims and requests allowance of them.

In addition, Applicant respectfully invites Examiner to contact Applicant's representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
Paul Vanlint

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